THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.22213 OF 2006

Date: 12.11.2007.

Between:

Botcha Yeruku Naidu, S/o.Appalaswamy

..Petitioner.

AND

The District Collector, Srikakulam
and others.

…Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.22213 OF 2006

ORDER:

1. Heard Sri Taddi Nageswara Rao, the learned Counsel representing the writ petitioner, the learned Assistant Government Pleader for Irrigation and Sri Vinod Reddy, the learned Counsel representing respondent Nos.1 to 5 and respondent Nos.6 to 9 respectively.

2. Sri Taddi Nageswara Rao, the learned Counsel representing the writ petitioner had taken this Court through the affidavit filed in support of the writ petition, the averments made thereunder and also had taken this Court through the relevant provisions of the Andhra Pradesh Farmers Management of Irrigation Systems Act 1997 (Act 11 of 1997), (hereinafter, in short, referred to as 'the Act' for the purpose of convenience), in general and Section 36 of the Act in particular. The learned Counsel also pointed out that in the light of the clear language of Section 36 of the Act, the stands taken in the respective counter affidavits cannot be sustained. The learned Counsel also would maintain that in this case though the Vice-President was not elected, due nomination was made and hence, the committee constituted cannot be said to be either defective or defunct and in the light of the same, the stands taken by the respective respondents cannot be sustained. While elaborating his submissions, the learned Counsel also had drawn the attention of this Court to Rule 14 in G.O.Ms.(P).No.47, Irrigation and Command Area Development (CAD.IV) Department, dated 04.04.2003, the Andhra Pradesh Farmers Management of Irrigation Systems (Conduct of Elections) Rules, 2003, (hereinafter, in short, referred to as "Rules" for the purpose of convenience), and would submit that these Rules are meant for the specific purpose and at any rate, as far as invalidity of the committee is concerned, the said Rule cannot override Section 36 of the Act.

3. On the contrary, the learned Assistant Government Pleader for Irrigation had drawn the attention of this Court to the object of the Act and also placed strong reliance on G.O.Ms.No.68, dated 13.06.2005. While further elaborating her submissions, the learned Assistant Government Pleader for Irrigation also had drawn the attention of this

Court to the proceedings dated 26.12.2003 and in particular, placed strong reliance on Rules 14 and 23 of the Rules, referred to supra, and would maintain that in the interest of the farmers in general, the said action had been taken and hence, the same cannot be found fault. The learned Assistant Government Pleader for Irrigation also would contend that when due representation is not given to the persons belonging to the other reach, the very object of the Act would be defeated and hence, in the facts and circumstances, there is no substance in the writ petition and the same is liable to be dismissed.

4. Sri R.Vinod Reddy, the learned Counsel representing the proposed parties, who were brought on record as respondent Nos.6 to 9, would maintain that these persons are agriculturists, belonging to the other reach and their interest has to be protected and if these respondents and their interest are not protected, the very object of the Act would be defeated and inasmuch as there is inherent difference in the constitution of the committee, the impugned action may not be found fault in any way whatsoever. The learned Counsel while making elaborate submissions had taken this Court through the stand taken in the affidavit filed in support of the vacate application.

5. Heard the learned Counsel and perused the respective pleadings of the parties and also the material placed before this Court.

6. This Court issued *rule nisi* on 26.10.2006 and made the following order in W.P.M.P.No.28209 of 2006:

> "There shall be interim direction to respondents to entrust the works falling with the area of operation of the Sayanna Channel Water Users Association (Minor Irrigation), Khandyam, Regidi Amadalavalasa Mandal, Srikakulam District, in favour of the Association if the value of the works is less than Rs.5,00,000/- (Rupees Five Lakhs only) and the petitioners water users Association is not defunct as per the Act."

7. It is needless to say that the controversy between the parties is in relation to the question whether the Water Users Association in fact, became defunct as per the Act or not.

8. The proposed parties, respondent Nos. 6 to 9, filed an application in W.P.M.P.No.29059 of 2007 and this Court made an order on 05.11.2007 impleading the said parties. The said parties also filed W.V.M.P.No.2879 of 2007. Respondent Nos.1 to 5 filed W.V.M.P.No.885 of 2007 taking respective stands in the affidavits filed in respect of the said applications.

9. The Writ Petition is filed for a Writ of *Mandamus* or any other appropriate writ or direction declaring the action of the respondents in not entrusting the works falling with the area of operation of the Sayanna Channel Water Users Association (Minor Irrigation) Khandyam, Regidi Amadalavalasa Mandal, Srikakulam district in favour of the association as illegal, arbitrary and consequently, direct the respondents to entrust the works which are falling with the area of operation of the association in favour of the association forthwith.

10. It is stated by the writ petitioner that the elections relating to the Managing Committee of Sayanna Channel Water Users Association (Minor Irrigation) Khandyam, Regidi Amadalavalasa Mandal, Srikakulam District were held on 07.01.2006 and the petitioner was elected as Member and after elections were over, the Members of the Managing Committee had elected the petitioner as President and the Election Officer had issued certificate to that effect. It is also stated that ever since the date of the election the petitioner has been functioning as President of the Society as per the rules and regulations. Further specific stand had been taken that the election to the post of Vice-President was not conducted on that day and the same was declared as a vacancy. Later on, one of the Members of the Managing Committee Sri P.Srihari Naidu was nominated as Vice-President as per the Rules. The Sub-Committees i.e. the Works Committee, Water Management Committee and Financial Committee, Supervisory, Training and Guidance Committee were also formed as per the Rules. The General Body of association is being conducted from time to time and the society is functioning as per the rules and regulations.

11. It is also further stated that respondent No.3 had entrusted the following works in favour of the society:

(i) to construction of protection wall and providing shuttering arrangements to bed regulator at KM 9.54 of Sayanna canal at an estimated cost of Rs.1,74,000/- to the society vide proceedings Rc.No.DEC II/OTA/SO2/ Sayanna /SKLM/05-2 dated 3.11.2005 of CE. Minor Irrigation.

(ii) Reconstruction of diversion of Doddibelt at KM 9.72 Saganna channel at an estimated cost of Rs.1,61,500 vide CE proceeding dated 3.11.2005.

(iii) Construction of protection wall (left side) u/s of bed regulator at KM. 9.54 of Sayanna canal at an estimated cost of Rs.1,70,000 vide proceedings dated 3.11.2005.

The society had entered into agreement with the department for execution of the works. Because of non cooperation of the officials, the society is not able to execute the work.

12. Further it is averred that while the matter stood thus, the officials without the knowledge of the society have been entrusting the works in the area of operation of the society in favour of third parties. As per the provisions of the Act, all the works within the area of operation shall be entrusted to the society. Respondents 1 to 5 are trying to entrust the works relating to CM & CD works at an estimated cost of Rs.13,51,000/-, Rs.10,80,000/- and Rs.2,70,000/- in favour of third parties. On coming to know about the same, the petitioner as President of the society got issued a legal notice on 23.9.2006 to the respondent No.3. To the legal notice so issued respondent No.3 issued reply vide letter No.1017M/DB/JT.02, dated 10.10.2006, wherein it had been stated that as the society had become defunct the works are not being entrusted and that the bank account was not opened in the name of the society. It was further stated that due to non-election of the Vice-President the society could not open a bank account and if the President and Vice President are elected then only

bank account will be opened and the works will be executed through the association.

13. It is also stated that after the elections to the Managing Committee were held, the elected Members elected the petitioner as President. As per Rules, one T.C. Member Sri P.Sri Hari Naidu was nominated as Vice-President. It is further stated that the association is having bank account with Andhra Bank, Palakonda and the same is in operation. Further specific stand has been taken that the allegations of respondent No.3 that the Water User Association has become defunct is not legal and valid. It is pertinent to mention here that as per the Act there is no provision for defunct of the elected body, hence the question of defunct of the association does not arise. The association is functioning as per rules and regulations and the respondents had entrusted works, as stated supra, in favour of the association and the department had also entered into agreements with the association.

14. Further it is stated that as per Section 36 of the Act, no act or proceedings of the Managing Committee of a farmers organization shall be invalid by reason of the existence of any vacancy or defect in the constitution of the said committee. The election to the post of Vice President was not conducted, but however, one of the T.C. members had been nominated as Vice President and the association is functioning. The allegation of respondent No.3 that the Water User Association had become defunct is not legal and valid. No notice had been issued and no opportunity had been given to the association relating to the functioning of the society. Specific averment has been made that the association is functioning and it never became defunct. In such circumstances, being left with no other option, the writ petitioner approached this Court praying for the reliefs specified above.

15. In the counter affidavit filed by respondent Nos.1 to 5

averments in detail had been made. It is averred in para 2 that the election to the post of Vice-President was not conducted on that day and declared as a vacancy and later on, one of the Members of the Managing Committee Sri P.Srihari Naidu was nominated as Vice-President in violation of the Act. Further specific stand has been taken that the society has been functioning as per rules and regulations cannot be said to be correct.

16. Further it is averred that the Water Users Association of Khandyam of Regidi Amadalavalasa Mandal consists of six Nos. of T.Cs in Minor Irrigation sector, both upper reach and lower reach i.e. 3 TCs in each reach. As per Rule 14 of the Election Manual, issued vide G.O.Ms.No.47, I&CAD (CAD-IV) Department, dated 04.04.2003, the President and Vice-President of Water Users Association are to be from two different reaches. Election to the post of President is to be taken up first. There is no restriction of upper reach or lower reach for inviting the nominations for the post of President. After election to the post of President is over, the reach of the President is to be ascertained. Nominations for the post of Vice-President shall be invited from other reach. As such, it is requested to provide the information to the Election Officer regarding the upper and lower reach T.Cs. Further Government have issued clarification vide letter No.CAD/DEE1/639/2002, dated 8.11.2006, of Commissioner, CAD & Principal Secretary to Government, I&CAD Department, A.P., Hyderabad which reads as follows:

> "In spite of taking all precautions, if it happens the President and Vice President are elected from same reach, the election to Vice President has to be cancelled duly giving the written notice to Vice President and Vice President post is to be declared as casual vacancy…"

17. Further it is stated that during 2004, elections were conducted. During the said elections,

Sri K.Koti Surya Prakasa Rao was elected as President from lower reach and Sri Karena Kannam Naidu was elected as Vice-President

from upper reach. They are continued upto 2006. It is also averred that during 2006, elections to the Water Users Associations were conducted. The election for the post of President was conducted on the same day. The petitioner Sri B.Yerukunaidu was elected as President from Upper reach. Due to some problems, the Vice-President election was not done from lower reach i.e. from T.Cs 4, 5, 6 and the Vice-President post was declared as casual vacancy by the Election Officer.

18. Further it is stated that as per the Act, the President should conduct meetings of the Managing Committee with other T.C. members and Vice-President. As per the Rules, vacancy of the Vice-President will be filled up temporarily with a T.C.Member who has in the lower reach, in the Managing Committee meeting and the resolution should be submitted to the District Collector, Srikakulam through respondent Nos.2 and 3. In this aspect the petitioner has not conducted meetings of the Managing committee and did not cooperate to elect the Vice-President so far. The petitioner has not completed the work and also not opened the Bank Account. As per the Act, President and Vice-President are the Joint account holders. Due to non-election of Vice President, the Water Users Associations is not functioning so far.

19. It is also averred that during 2003, Government have issued instructions for operation of the Bank Account vide Lr.No.COM/CAD/DEE.1/WUA Elections/2002, dated 26.12.2003, of the Commissioner Cad & Principal Secretary to Government, I&CAD Department and the said letter reads as under:

"Letter No.Com/CAD/ DEEI/WUA Elections /2002, dated 26.12.203

Sub: Water Users Associations
Instructions regarding operation
of WUA Bank Account – Reg.

Ref: Commissioner, CAD Notification
even No.dated19.12.2003.

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In the reference cited, 1.1.2004 is appointed as common date for first Managing Committee meeting Rules were issued vide G.O.Ms.No.541, I&CAD (CAD IV) Department, dated 27.12.1997 for functioning of the Farmers Organizations.

As per Rule 23, Farmers Organization shall open an account in National Bank or Cooperative Bank in its name and shall operate jointly by the President/Chairman and one of the Managing Committee members as nominated by the Managing Committee. In the revised setup Vice-President post is inducted in each tier of Farmers Organizations. Now Vice President shall be the Joint Account holder for operation of the Bank Account. As such, the District Collectors are requested to intimate to the Water Users Association Presidents in their respective districts to operate the Bank Accounts of the Waters Users Association with Vice President as joint account holders. In such of the cases where Vice Presidents are note elected, the Managing Committee can nominate one of the T.C. members as joint Account.

Yours faithfully,
Sd/-
Commissioner, CAD.,"

20. It is also stated that whereas in the present situation, the petitioner has violated the Rules and also the Government instructions. The petitioner has stated in the writ petition that the Managing Committee nominated Sri P.Srihari Naidu, as Vice President from upper reach. The petitioner has taken his own decision, elected Vice-President in his reach and created un-necessary correspondence and filed writ petition. In view of the above reasons, nomination of Sri P.Srihari Naidu, as Vice-President is against the Rules.

21. It is further stated that the following six members are elected as T.C.Members of the Water Users Association, Khandyam, Regidi Amadalavalasa Mandal during 2004-2006 (i.e., two years tenure) in respect of Minor Irrigation sector.

(i) T.C.Member … Sri Polavalasa Srihari Naidu|

(ii) T.C.Member … Sri Karnena Kannam Naidu| Vice President

(iii) T.C.Member … Sri Botcha Yerukunaidu |Upper reach

(iv) T.C.Member … Sri Pappala Venkatappalanaidu|

(v) T.C.Member … Sri Batna Viswanadham |

(vi) T.C.Member …Sri Kinjarapu Kotisurya|President Lower reach
Prakasa Rao

After that, Sri Karnena Kannam Naidu was elected as Vice-President under upper reach and Sri Kinjarapu Kotisurya Prakasa Rao was elected as President under Lower reach as per the Act. Pass Book was also opened as Joint Account in favour of President and Vice-President duly attested by Deputy Executive Engineer to operate functionaries of the Water Users Association functionaries.

22. It is also stated that both the members acted as President and Vice-President and run the Water Users Association. The Water Users Association is functioned in full swing.

23. It is also stated that in the meanwhile, while functioning the W.U.A. in full swing, three works were administratively approved by the Chief Engineer, Minor Irrigation, Hyderabad during 11/2005. These estimates were technically sanctioned at Divisional level on 22.12.2005 vide DR.Nos.1376, 1377 and 1378/2005-06, and entrusted the works to the President, Water Users Association, Khandyam.

24. It is further stated that subsequently, W.U.A. elections were conducted in 2006 and the petitioner Sri B.Yerukanaidu was elected as President from the upper reach ie. from T.Cs.1,2,3. But the election of Vice President was not conducted and as such post of Vice-President was vacant. As both persons are not elected, the Water User Association is not functioning in full shape. The petitioner Sri B.Yeruka Naidu has not taken any decision to elect Vice-President from lower reach or to nominate once T.C. member from lower reach i.e. T.Cs 4, 5, 6, as per the Rules, which is a requirement for operating Bank Account.

25. It is further stated that due to the above reasons, the execution of works, which were already sanctioned and concluded agreements with the Farmer Management Committee, is not tackled. At present, the W.U.A. is also not functioned due to casual vacancy of Vice-President and nonelection of T.C. from Lower reach, for which the water could not be supplied to the tail end ayacut.

26. It is further stated that the contents of the petitioner to entrust the works relating to CM & CD at an estimated cost of Rs.13,51,000/-, Rs.10,80,000 and Rs.2,70,000/- in favour of third parties by the respondents are not at all correct.

27. Further it is averred in para 14 that the Chief Engineer, Minor Irrigation, Hyderabad has accorded administrative approval for the following CM & CD works on Sayanna channel system of Regidi Amadalavalasa (M) of Srikakulam District as follows.

S.No.	Name of Work	C.Es Procdgs.No. & Dt.	Admn. Approval amount
1.	CM & CD works on Kandyam batti in Kandyam (v)	Pgs.No.CDE.II/05-1 Dt.7.12.2005	Rs.3.37 Lakhs
2.	Construction of protection wall on Rayabharam batti of Komiri (v)	Pgs.No.CDE.II/05-2 Dt.7.12.2005	Rs.3.16 Lakhs
3.	CM & CD works on Avutubatti of Venkatapuram (v)	Pgs.No.CDE.II/05-3 Dt.7.12.2005	Rs.2.77 Lakhs
4.	Repairs of Ijjuvanibatti and Gorjabatti of Sayanna channel in Venkatapuram (v)	Pgs.No.CDE.II/05-4 Dt.7.12.2005	Rs.4.21 Lakhs
	Total		Rs.13.51 Lakhs.

Total estimated cost of works comes to Rs.13.51 lakhs only, but not Rs.13.51 lakhs, Rs.10.80 lakhs and Rs.2.70 lakhs as mentioned by the petitioner in his writ petition.

28. It is further stated that based on the instructions of the Chief Engineer, a letter was addressed to the District Administration and requested to tie up with 20% rice component of the cost of the work, if available vide this office letter No.84R/31.5.2006. In that letter, it is specifically mentioned that the W.U.A. is not functioning due to casual vacancy of Vice-President and requested to issue permission to execute the above works through Ayacutdar Committee, as these works are in urgent nature vide office letter No.84-R/DB/31.5.2006.

29. It is also stated that the Government have issued instructions to take up permanent restoration works of Flood damages

costing up to Rs.5.00 lakhs departmentally in addition to entrustment of User Groups/Tenders and procedure prescribed therein for timely completion vide Government Memo No.13732/Minor.IV/2006-1/ Dt.22.5.06.

30. It is also stated that based on the above guidelines and office letter No.84-R/Dt.31.5.2006, Administrative approval was accorded by the District Collector, Srikakulam, tie up with 20% of SGRY (S.C) Rice Component against an estimated cost of Rs.13.15 lakhs and also issued directions vide item (b) which reads as follows:-

> "The Engineer concerned shall supervise and guide the works committee" (vide proceedings D.Dis.1790/06/ D6/30.8.2006 of the District Collector, Srikakulam as the District Committee under Chairmanship of the District Collector will ensure total transparency in identification of User Groups and in the execution of the programme.
>
> In the light of the orders issued by the Government, Chief Engineer and District Collector, Srikakulam vide their proceedings Nos, the above works were entrusted to the ayacutdar committee vide Divisional Agreement Nos.
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> (i) Government Memo No.13732/Minor.IV/2006-1/22.5.2006.
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> (ii) Proceedings No.D.Dis.1790/06D6/ Dt.30.8.2006 of the District Collector, Srikakulam.
>
> (iii) Letter No.CAD/DEE1/639/2002 Dt.8.11.2006 of Commissioner, CAD & Principal Secretary to Government, I & CAD Dept., A.P., Hyderabad.

S.No	Name of Work	C.Es Procdgs.No. & Dt.	Admn. Approval amoumt	No. & Dt.	Value	Period
1	CM & CD works on Kandyam atti in Kandyam (v)	Pgs. No. CDE.II/05-1 Dt.7.12.2005	Rs.3.37 Lakhs	484/07-07 4.10.06	332637	90 days
2	Construction of protection wall on Rayabharam batti of Komiri (v)	Pgs. No. CDE.II/05-1 Dt.7.12.2005	Rs.3.16 Lakhs	485/06-07	313450	90 days
3	CM & CD works on Avutubatti of Venkatapuram (v)	Pgs. No. CDE.II/05-3 Dt.7.12.05	Rs.2.77 Lakhs	487/0607 4.10.06	273783	90 Days

4	Repairs to Ijjuvanibatti and Gorjabatti of Sayanna hannel i n enkatapuram (v)	Pgs. No. CDE.II/05-04 Dt.7.12.05	Rs.4.21 Lakhs	486/06-07 4.10.06	411543	90 Days
	Total		Rs.13.51 Lakhs		1331413	

31. It is stated that the action taken by the department for entrustment of the works to the Ayacutdar Committee is in order, as the W.U.A is not functioned so far. The contention of the petitioner that the W.U.A is functioned is not at all correct. The petitioner has given false statements and filed writ petition with motivated views and due to political rivalry. If the works are not tackled immediately through Ayacutdar committee, it is very difficult to supply water to the Ayacut through Sayanna channel. These works are in urgent nature to supply the water up to tail end.

32. It is further stated that the contention of the petitioner that one T.C. member Sri P.Srihari Naidu nominated as Vice-President is violation of the Act. As per the Act, in the present situation, the President was elected from Upper reach i.e., from T.Cs 1,2 and 3, the Vice-President shall be invited from other reach (i.e. Lower Reach) from T.Cs 4,5 & 6. But it was not done. The post of Vice President was declared as a casual vacancy by the election officer. If the Managing Committee is formed and elected one T.C. member in the Lower reach, then he will be eligible as joint account holder to maintain the Bank Account. Where as the petitioner has elected one T.C.Member in Upper reach as Vice-President and stated that the Association is having Bank Account with Andhra Bank, Palakonda and the same is in operation. The action taken by the President in two posts(i.e. President & Vice-President) in the same reach i.e. Upper reach is violation of the Rules and the Election Manual issued vide G.O.Ms.No.47, I&CAD (CAD-IV) Department, dated 04.04.2003. The operation of Bank Account with two members in the same reach is against to the Rules. He has created complications and filed writ petition with motivated views.

33. It is further stated that the detailed report regarding non-

functioning of W.U.A. of Khandyam was submitted to the District Collector, Srikakulam vide letter No.84-R/31.5.2006 and requested to entrust the works through Ayacutdar Committee. Government have also issued permission to take up permanent restoration works of flood damage upto Rs.5.00 lakhs to User Groups etc., in addition to tenders as per local conditions by the District Committee. The committee under the Chairmanship of the District Collector will ensure total transparency in identification of User Groups and in the execution of the programme vide Govt. Memo No.13732/Minor-IV/2006-1, dated 22.5.2006.

34. It is also averred that based on the above guidelines, the District Collector has also accorded permission vide proceedings No.D.Dis.1790/06/D6/ Dt.30.8.2006. In view of the above circumstances, these works are entrusted to the Ayacutdar committee of the respective Minor irrigation source of Khandyam village. If the works are not taken up through ayacutdar committee, due to non functioning of W.U.A., it is very difficult to supply water to the ayacut lands. Ayacutdars are also suffering a lot for non execution of works within the time stipulated. But the petitioner with motivated views, filthy ideas, filed writ petition. In all aspects, the contention of the petitioners from all paras mentioned in the writ petition are totally incorrect, baseless, false and violation of the Rules.

35. It is further stated that as per the instructions of the Government and orders of the District Collector, Srikakulam, the action taken by the department for entrustment of works to the ayacutdar committees is in order.

This is the stand taken by respondent Nos.1 to 5 in the counter affidavit.

36. Strong reliance was placed on G.O.Ms.No.68, Irrigation & CAD (Minor Irrgn.IV) Department, dated 13.06.20005, and the same reads as hereunder:

> "In the reference read above, Government have accorded administrative approval for the programme of Restoration of Minor Irrigation sources as a ecosystem with a total outlay of Rs.120.00 crores comprising of Rs.60.00 crores from Minor

Irrigation Plan funds and Rs.60.00 crores worth of Food Grains from District Collectors.

2. Government further issued orders for selection of works to be done by the Committee constituted as shown in the guidelines of the G.O. and Executive Engineers of Minor Irrigation will take up the works. The works costing less than Rs.2.00 lakhs may be taken up departmentally and works from Rs.2.00 lakhs to Rs.10.00 lakhs by tendering procedure. The works under one tank/source should not be spolit to No. of sub works.

3. In partial modification of orders issued in the reference read above, Government hereby issue modified orders for:

a) The Government further modify the works costing upto Rs.5.00 lakhs will be taken up through user groups in addition to the tendering procedure. User groups shall be identified by the District level committee.

b) The food grains component up to a maximum of 50% and the District Committee is permitted to decide the ratio of cash and food grains ranging from 50: 50 to 70 : 30 (cash : grains) depending upon the local requirements. The overall scope of the programme shall be restricted to with in the cash component already proposed to the Districts. The works under P.R. tanks to be taken up under 50:50 ratio only.

4. The Committee under Chairmanship of the District Collector will ensure total transparency in identification of User Groups and in the execution of the programme.

5. This order issues with the concurrency of Finance (Exp.PW.1) Dept. vide their U.O.4928/542/Exp.PW1/05, dated 13.6.2005."

37. Respondent Nso.6 to 9 in the affidavit filed had stated that they are farmers having lands in six villages. These implead petitioners, shown as respondent Nos.6 to 9, narrated certain facts in para 3 of the affidavit. It is stated that the elections were held in the year 2006 to the Sayyanna Channel Water Users Association. The election was held for the six territorial Constituencies, three from the upper reach and three from lower reach. As per Rule 14 of the Election Manual issued vide

G.O.Ms.No.47, I&CAD (CAD-IV) Department, dated 04.04.2003, the President and Vice President should be from two different reaches. The election is held for the post of President and after the election of the President, the Vice President is elected from other reach. The petitioner in the writ petition was elected as the President. As the President was a TC Member from the upper reach, the Vice President had to be elected from the lower reach, but as the election for the Vice President could not be taken up, post of Vice President was declared as casual vacancy by the election officer.

38. Further it is stated that as per the Act, in the absence of Vice President, the vacancy should be filled up temporarily with a TC Member of the lower reach in the Managing Committee meeting and the resolution should be submitted to the District Collector, Srikakulam through respondents 2 and 3 in the writ petition. As per the instructions of the Government, the Bank Account in the name of the Association shall be held and operated jointly by the President and the Vice President. In the case of non-election of the Vice President, the Managing Committee can nominate one of the TC Members as account holders. The member who is nominated should be from the lower reach as the President is from upper reach. The writ petitioner has stated that Sri P.Srihari Naidu the TC Member is nominated, the said nomination is illegal and in effective. The Government, due to non-election of the Vice President and as the Bank Account was not operational as per the Rules, has not been allotting funds to the Association. The Chief Engineer, Minor Irrigation, on the representation of the farmers allotted funds for construction of protection wall, and other necessary repairs to the Sayanna Channel.

39. Further it is stated that the association was not properly constituted and as the writ petitioners showed total lack of interest the works could not be taken up. On the representation of the ayucutdars to the Executive Engineers Irrigation, the Executive Engineers addressed a letter to the District Collector and Chief Engineer, who in turn keeping the interest of the farmers have entrusted the work to the Ayacutdar

Committee and have also entered into agreement with the Committee.

40. It is also averred that the writ petition was filed suppressing the true and correct facts. It is also stated that in the facts and circumstances, the Ayacutdar Committee is competent to execute the work. This appears to be the specific stand taken by the respondents 6 to 9 who came on record on an application filed by them in M.P.No.29059 of 2007 which had been ordered on 05.11.1999 by this Court.

41. Now the question to be decided is whether the action of respondent Nos.1 to 5 can be said to be justified in the facts and circumstances of the case.

42. The respective stands taken by the parties already had been referred to supra. There is no serious controversy relating to the factual matrix. The Counsel on record made elaborate submissions in relation to the object of the Act and the Counsel representing the writ petitioner had emphasized the object of the Act and the democratic spirit to be observed and non-entrustment of such works to a democratically elected committee cannot be justified in the light of the provisions of the Act and also the Rules framed thereunder. On the contrary, the learned Assistant Government Pleader for Irrigation and also Sri R.Vinod Reddy, the learned Counsel representing respondent Nos.6 to 9 emphasized that the object and the spirit of democratically elected committees may have to be maintained, but only in accordance with the rules governing the field and also there should be due representation to all the reaches in the interest of the smooth functioning of the committee as such. The fact that the committee was duly constituted is not in serious controversy. The fact that the Vice President was not elected and there was nomination is also not in serious controversy. The fact that there was no representation to the other reach is also not in serious dispute. The Act, is an Act to provide for farmers' participation in the management of irrigation systems and for matters connected therewith or incidental thereto. Section 43 of the Act deals with power to make Rules. Strong reliance was placed on

Section 36 of the Act and the said provision deals with acts not to be invalidated by informality or vacancy and the said provision reads as under:

> "No act or proceedings of the managing committee of a farmers' organization shall be invalid by reason only of the existence of any vacancy in, or defect in the constitution of the said committee".

43. Rule 14 of the Rules specified supra dealing with the special meeting for electing the President and Vice-President of a water users association, reads as under:

> "14. Special meeting for electing the President and Vice-President of a Water Users Association:
>
> (1) All the elected members of Territorial Constituencies shall be present at the venue of election at the appointed time, as directed by the Election Officer, after the declaration of the results of Territorial Constituency members of the Water Users Association, for electing the President and Vice-President;
>
> (2) For equitable distribution of water within the Water Users Association, it is necessary to have the two important functionaries namely the President and Vice-President elected from two different reaches of the Water Users Association. This will ensure that the farmers from Lower reaches have their representative in decision making role to safeguard their interests. To achieve the above objective, the following steps shall be taken.
>
> (a) The District Collector after delineating the Territorial Constituencies based on hydraulic basis shall also demarcate half of them as the Territorial Constituencies in the Upper reach and the remaining half of them as the Territorial constituencies of Lower reach, based on their proximity to the water source and notify them accordingly.
>
> (b) The Election Officer shall receive the nominations from the desirous candidates for the post of President from among the Territorial Constituency members elected for the Water Users Association. Any Territorial Constituency member may submit his nomination for the post

of the President irrespective of his being from the Upper reach or the Lower reach.

(c) The Election Officer shall conduct the elections and declare the candidate who secured the highest number of votes as the President.

(d) The Election Officer shall invite nominations for the post of Vice-President from the Territorial Constituency members of Lower reach, if the President is elected from the Upper reach and vice-versa so as to ensure that a Water Users Association shall have the President and Vice-President representing from two different reaches and conduct election and declare the results.

(3) Even if some of the elected members of Territorial Constituencies are not present at the venue by the appointed time, the election to the posts of President and Vice-President shall be held with the members present, as per schedule;

(4) If none of the members of Territorial Constituencies turns up at the appointed time or only one member of Territorial Constituency turns up, the Election Officer shall wait at the venue for 30 minutes and if there is no change in the situation, the Election Officer shall declare the posts of President and Vice-President as causal vacancies until the elections are held for these posts under Section 15 of the Act and record in Form-15C and the same shall be submitted to District Election Authority. If the Territorial Constituency posts filled by election are less than fifty percent of the total posts, the same procedure shall be followed.

(5) Till such time, necessary transitional arrangements shall be made or if such arrangements are already in existence, the same may be continued as per Section 34 of the Act;

(6) If the members of Territorial Constituencies, though present in the special meeting, fail to elect either the President or the Vice-President or both within the scheduled time, the same procedure as mentioned under sub-rule(4) shall be followed."

44. Strong reliance was laid on Rule 14 (2) of the Rules, wherein it has been specified that for equitable distribution of water

within the Water Users Association, it is necessary to have the two important functionaries namely the President and the Vice-President elected from two different reaches of the Water Users Association. This will ensure that the farmers from the Lower reaches have their representative in the decision making role to safeguard their interests. To achieve the above objective the steps referred to above in Section 14 (2) clauses (a) to (d) shall be taken. There cannot be any doubt whatsoever that the Rule as such had been thought of keeping in view the spirit and object of the Act, but at any rate, the Rule as such cannot override the statutory provision as such. Section 36 of the Act had already been referred to supra. Further strong reliance was placed on the Circular, dated 26.12.2003. It is needless to say that this is only a Circular and definitely this cannot override Section 36 of the Act specified above. At any rate, the last portion of the Circular specifies, in such of the cases where the Vice Presidents are not elected, the Managing Committee can nominate one of the T.C. members as joint Accountant. In the light of the clarification specified in the Circular and also in the light of the specific provision, Section 36 of the Act, this Court is of the considered opinion that unless the relevant provisions are suitably amended the contentions advanced either by the learned Assistant Government Pleader for Irrigation or by the learned Counsel representing respondents 6 to 9, Sri Vinod Reddy, cannot be accepted. Accordingly, the writ petitioner is bound to succeed.

45. The writ petition is hereby allowed. No order as to costs.

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P.S.NARAYANA, J.

Date:12.11.2007.
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